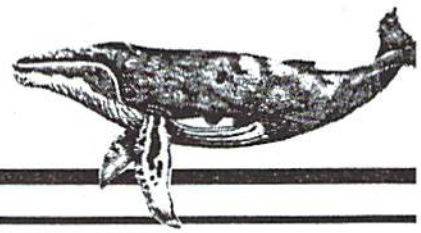
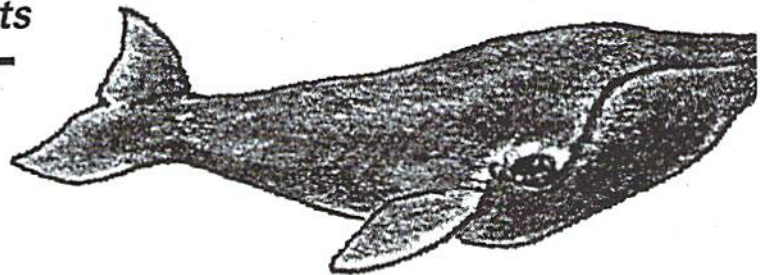


NATURE



Whale's tale

*Proposed legislation would protect whales
from dangers of fishing nets*

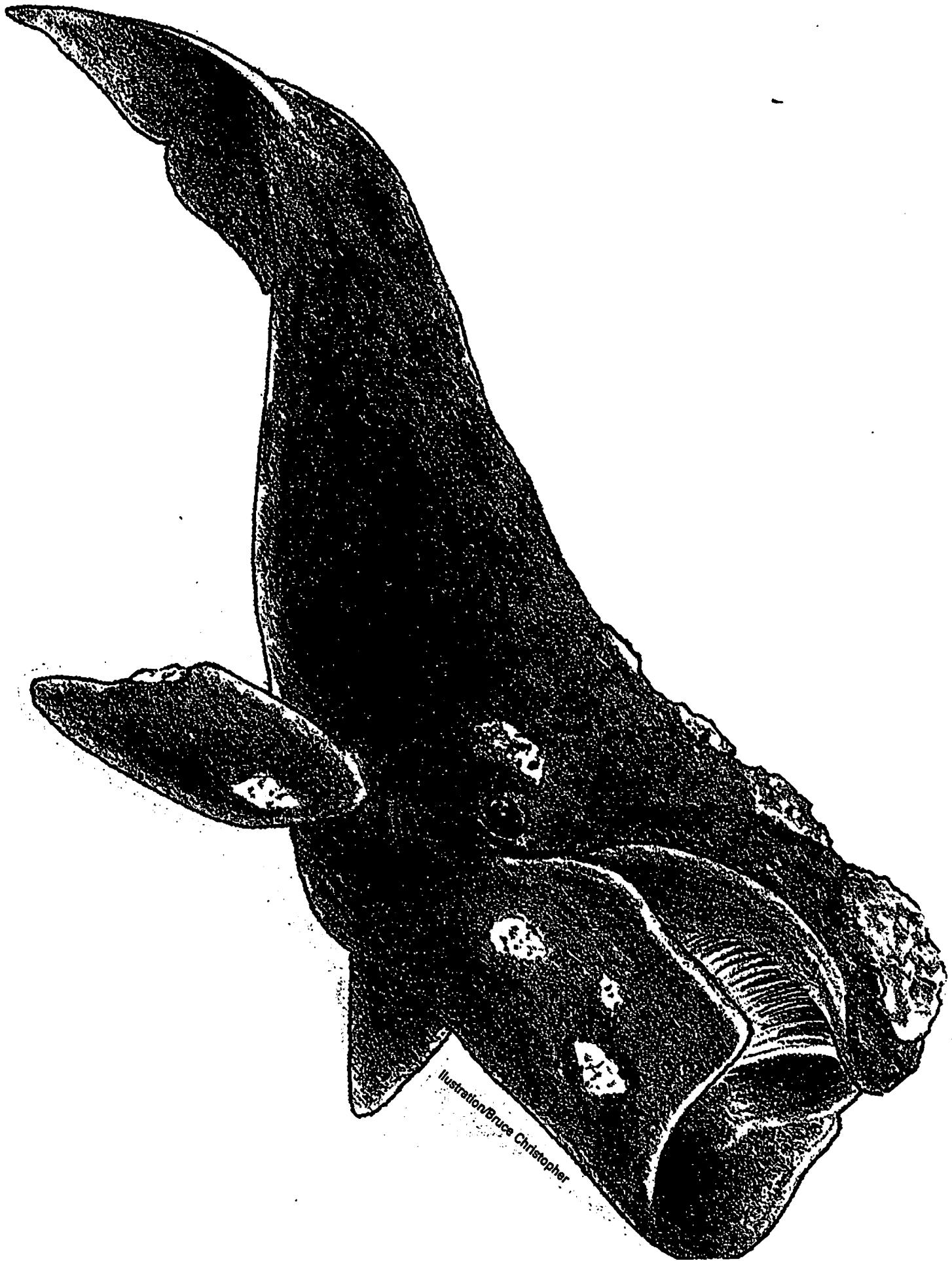


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*— William Adler,
Massachusetts Lobstermen's Association*



By Lesley Mahoney

STAFF WRITER

Local fishermen are cautiously optimistic about newly proposed federal regulations to protect endangered whales from getting tangled in lobster traps and floating nets used along the coast from Maine to Florida.

The Atlantic Large Whale Take Reduction Plan — which is interim and slated to take effect Nov. 15 following a period of public comment through Oct. 15 — represents a revision of a controversial take reduction plan proposed by the National Marine Fisheries Service in April.

The implementation of the federal plan coordinates with the season when whales usually show up in southeastern Georgia and Florida. They typically begin arriving in those waters in November.

The newest plan, which includes modifying gear used by fishermen, as well as closing areas of the ocean when whales are there, is more flexible than the previous plan — allowing fishermen more options to choose from and a greater differentiation among fishing areas.

In addition, the four-year plan will include continued feedback from the take reduction team and gear advisory team instrumental in developing the plan.

The federal plan is required by 1994 amendments to the federal Marine Mammal Protection Act that requires NMFS to develop, with public participation, whale take reduction plans.

The plan aims to protect the humpback, minke, fin and North Atlantic right whales; all but the minke are endangered. A species that once numbered in the tens of thousands, the number of right whales is now estimated to be down around 300.

Between 1987 and 1996, 15 right whales were either seriously injured or died because of fishing gear. Twelve injuries or mortalities during that time period can be attributed to ship strikes.

Developed by the National Marine Fisheries Service, the federal plan proposed last week represents a collaborative effort by all stakeholders, said Teri Frady, chief of research communications for the northeast region's National Oceanic and Atmospheric Administration, which oversees the fisheries.

"A negotiation is a good way to put it," she said. "We knew going in there were a lot of different stakeholders."



Researchers from the Center for Coastal Studies in Provincetown prepare to use a crossbow to attach a radio transmitter to a right whale while cruising the area of Stellwagon Bank this past spring.

Staff photo/Betsy Deane

We wanted
to please
everyone."

William Adler, a Marshfield resident and the head of the 1,100-member Massachusetts Lobstermen Association, is one of those stakeholders.

"We're cautiously optimistic that this will solve the problem. It appears the National Marine Fisheries has listened to the industry...My initial response is that it looks pretty good," said Adler, pointing out the association is still sifting through the 155-page document released last week.

"The goal was to develop a balanced approach — one that protects the whales from gear entanglement while balancing the needs of the fishing community. This plan successfully achieves the balance," said Terry Garcia, deputy administrator and acting assistant secretary of commerce for the National Oceanic and Atmospheric Administration.

The goals of the plan include reducing within six months serious injuries and mortalities of right whales caused by commercial fishing operations to a rate of less than four whales per decade, and reducing to an insignificant number the risk of entanglement posed by four fisheries using lobster pot and gillnet gear to four large, mostly endangered, whales by 2001.

The plan's rules will affect more than 3,400 lobster firms and 360 gillnet firms along the Atlantic seaboard and it will cost those firms between \$100 to \$13,600 to modify their gear so that a whale can break away if entangled.

Frady said a lot of fishermen are already modifying their gear.

Adler said the worst case scenario would be if a lobsterman replaced all his floating rope with sinking rope — a project he said could cost about \$13,000. But that is just one on a list of acceptable options.

While the proposal includes some mandatory requirements, fishermen have a choice depending on where they set their gear when it comes to gear modifications to prevent whale entanglement.

"I think the way it's set up there are some good options," Adler said.

"The costs are pretty marginal unless you're fishing in critical habitats," Frady said.

The proposal requires that all lobster and sink gillnet gear will now have to be rigged so that the buoy line does not float at the surface of the water at anytime and prohibits "wet storage" of lobster gear — the practice of leaving unbaited traps in the water rather than storing them on land.

At least one modification from a list of acceptable options must be used if gear is set in areas rarely used by whales. For areas used more often by whales such as the critical habitat areas of Cape Cod Bay, Stellwagen Bank/Jeffreys Landing and the Great South Channel, at least two gear modifications from a list of acceptable options must be used.

Bob MacKinnon, a Marshfield resident and president of the Massachusetts Gillnetters Association, said the federal plan is "what we worked for."

But nevertheless, he said he is opposed to any closure for gillnetters in Cape Cod Bay.

MacKinnon, who worked on the take reduction team, said fishermen have "no intention of harming any marine mammal and are willing to make changes to help out."

While Adler said he likes most of what he sees of the plan, he said there are still a few glitches that should be addressed before the plan is officially implemented.

Adler takes issue with a few of the provisions that were actually implemented in critical habitat areas by state law last year. The federal plan complements the Massachusetts law.

For example, in the Cape Cod Bay Critical Habitat Area, lobster fishing is prohibited from January 1 through May 15 unless certain provisions have been taken.

Adler said he is opposed to the rule that prohibits single lobster traps in Cape Cod Bay. That regulation, imposed by the state last year, is an attempt to cut down on the number of buoy lines floating to the surface. Instead, all lobster pots must be set in trawls of four or more pots. Each trawl has a buoy secured at each end. But Adler said if a lobsterman wanted to use a single pot — which only has one buoy — he needs to use more buoys than before because of the trawl requirement.

Gary Ostrom, a commercial fisherman who is president of the Sandwich Fishermen's Association and worked on the gear team for NOAA, said he had hoped the federal law would not encompass the state law, which he said "stinks."

Due to the rule under state law — which is included in the federal plan — mandating all ground lines be made entirely of sinking line effective in critical habitat areas during critical habitat times, Ostrom said he lost more than \$6,000 in the April 1 storm due to sinking lines in the rocks.

And because his traps getting stuck in the rocks, Ostrom said 40 to 50 pounds of lobsters he caught died.

Ostrom said in 18 years, he has never had a whale in one of his traps.

Adler said he is also concerned with how the regulations will be worded. He is concerned about the potential for closing critical habitat areas if an entanglement causing injury or fatal-

ity occurs
with gear
modifica-
tions in
place.

Adler
wondered

whether fishermen will
report an entangled whale if they are faced with
the possibility of their area being closed.

He referred to the right whale rescue in
Chatham last month when fishermen reported
an entanglement.

Adler said there only have been two entangle-
ments in Cape Cod Bay over the last 20 years.
None of the whales entangled there died.

Adler also suggested exempting more areas
from gear modification than proposed in the
plan. So far, areas deemed "rarely used by large
whales or where the ability to disentangle an
animal is high" are exempted. That includes
most marine tidal areas, coves, harbors, salt
ponds and Casco Bay, Penobscot Bay,
Narragansett Bay, Long Island Sound, Delaware
Bay, Chesapeake Bay, and South of the
Virginia/North Carolina border.

Adler suggested making a case, to exempt
places like Duxbury Bay and parts of Boston
Harbor.

In addition to affecting commercial lobster-
men, the modifications also pertain to recre-
ational lobstermen. Adler said 7,000 people
hold recreational lobstering licenses in the state.

"We've got a sleeping giant here. The recre-
ational industry didn't even respond to this," he
said. "The commercial sector had to go to bat to
save itself."

During the public comment period, Frady said
the National Marine Fisheries Service is partic-
ularly interested in receiving feedback regarding
gear-marking techniques.

Ostrom is leery of that pointing out that boats
will often drag lines from one area and cut them
loose in another. Ostrom said if gear-marking is
used to track entanglement, the wrong area
could be faulted.

Frady, however, said the organization is aware
of that situation. She said gear-marking is not
intended to be a punitive tactic, but merely one
more way to gather information regarding whale
entanglement.

Comments on the interim rules should be
addressed to:

Chief of Marine Mammal Division, Office of
Protected Resources
1315 East-West Highway
Silver Spring, MD, 20910-33226

*Information from Associated Press reports is
contained in this article.*